HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.20766 of 2006

Date: 12-12-2006

Between :-

S.Vasantha and another ..

Petitioner

And

District Collector,
Hyderabad District, Hyderabad
And another ..
Respondents

HON'BLE SRI JUSTICE P.S. NARAYANA

Writ Petition No.20766 of 2006

ORDER:-

1. This Court issued *rule nisi* on 29-9-2006

2. The counter affidavit, additional counter affidavit, additional documents and the reply affidavit also had been filed.

3. At the request of the Counsel on record, the Writ Petition is being disposed of finally.

4. The Writ Petition is filed for a Writ of Mandamus declaring the Proced.No.B/348/06 dated 27-9-2006 of the 2nd respondent as illegal and void and consequently hold that the petitioners are entitled to deal with the property in House Nos. 10-3-113/P, 10-3-32/9/114P, and 10-32-9/11/115P, by developing the same in accordance with the sanction plan of the Municipal Corporation of Hyderabad under permit No.51/97 in file No.0837/CSC/TPT/2003, dt.21-8-2004 and pass such other suitable orders.

5. Sri A.Ramalingeshwar Rao, the learned Counsel representing the writ petitioners had taken this Court through the contents of the affidavit filed in support of the Writ Petition, the counter affidavit, the additional counter affidavit, the reply affidavit and also pointed out

the impugned order and the documents relied upon by the parties. The learned Counsel would contend that the proceeding dated 27-9-2006 in proceedings No.B/348/06 of the 2nd respondent under the provisions of the A.P.Land Encroachment Act 1905 (hereinafter, in short, referred to as 'Act' for the purpose of convenience) cannot be sustained. The learned Counsel had taken this Court through the elaborate reasons recorded in impugned order and would submit that virtually the 2nd respondent had made an attempt to decide the title to the property and in the light of the respective pleadings of the parties, it is clear that the predecessor-in-title and petitioners have been in possession of the property for sufficiently a long time and certain complicated questions of title also are involved and hence in view of the same, the summary proceedings initiated under the Act referred to supra cannot be sustained. The learned Counsel made elaborate submissions relating to several of the factual aspects and placed strong reliance on ***GOVT. OF A.P. v. T.KRISHNA RAO***[1]***, DISTRICT COLLECTOR, RANGA REDDY DISTRICT , HYDERABAD AND OTHERS v. K.NARASING RAO AND OTHERS***[2] and also an order in ***SMT. VIMALA MEHTA v.***

GOVERNMENT OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, REVENUE DEPARTMENT, SECRETARIAT, HYDERABAD AND OTHERS [3].

6. Per contra, the learned Government Pleader for Revenue had pointed out to the impugned order and would submit if the possession of the petitioners as such to be taken into consideration, the same is just recent. Even otherwise, the petitioners may be entitled to regularization in accordance with law but however without exhausting the said remedy, the petitioners are resorting to the present activity which would land the public at large into trouble. The learned Government Pleader for Revenue also would contend that it may be that the impugned order is not happily worded, but however, it cannot be said that the same is without jurisdiction since, inasmuch as, the petitioners are just encroachers upon the land, the provisions of the Act are attracted and hence the Writ Petition is liable to be dismissed. The learned Counsel also would contend that in a way the parties are resorting to unsustainable litigations like approaching Civil Court, withdrawing the suit and the other like proceedings and in that view of the matter on the ground of suppression of facts as well, the Writ Petition is liable to be dismissed.

7. Heard the Counsel.

8. The impugned order reads as hereunder:-

PROCEEDINGS OF THE MANDAL REVENUE OFFICER,
MARREDPALLY MANDAL.
PRESENT:- Sri U.RAGHU RAM SHARMA

Proced No.B/348/06
Dated:27-9-2006

Sub:- Land Marredpally Mandal – Illegal encroachment – Plot Nos.113, 114, 115of Sy.No.74 Marredpally village – eviction – Reg.

Ref:- Directions of the Hon'ble High Court in W.P. No.15628/06.

-: o0o :-

ORDER

In this case action has been initiated under A.P. Land Encroachment Act, 1905 eviction of Smt.Vijayalaxmi, Smt.Pentamma and Vasant from plot No.113, 114 and 115 of Nehrunagar, Marredpally where illegal construction is being carried out in the Government land admeasuring 800 sq.yards falls in Sy.No.74 of the Marredpally Paigah village. The above individuals have grabbed an extent of 800 Sq.Yards of Government land in Sy.No.74 and started illegal construction in the guise of building permission from MCH, Hyderabad. When the applicants, officials stopped the illegal construction, they have filed a Writ Petition bearing No.10791/2006 wherein the Hon'ble High Court has passed interim orders directing the parties to maintain status-quo. The said W.P. was withdrawn on 19-6-2006. Again the same the parties have filed one more Writ Petition in W.P. No.15628/2006 before the Hon'ble High Court which was disposed of on 1-8-2006 with the following direction:

"Learned Counsel for the petitioners Sri Sitaram

Chaparla is satisfied if the Writ Petition is disposed of with a direction that all the Executive authorities in the State, including the respondents herein, act lawfully in accordance with the Constitution and the Legislative mandate.

Learned Government Pleader appearing for the respondents does not dispute the petitioners contention that the respondents are required to act in accordance with law.

The Writ Petition is accordingly disposed of directing the respondents to act in accordance with law. No order as to costs."

Pursuant to the above directions the applicant herein had noticed a notice U/s.(7) of APLE Act 1905 vide file No.B/348/06. In reply to the same, on behalf of the above mentioned persons Smt.Vijaya Laxmi has filed certain documents and explanation. They are claiming the title through one P.Bhaskar Murthy who is allegedly the owner of a portion of alleged Sy.No.74/8. Sri Bhaskar Murthy is said to have purchased from one Mansab Jung who is an alleged assignee of Paigah authorities. The alleged assignments are bogus. They are also illegal. The land in Sy.No.74 is a Poramboke land and Paigah authorities have no authority to assign the same. The land which is rocky and unfit for cultivation cannot be assigned.

In respect of plot 113 one Municipal Tax receipt has been produced, whereas they have obtained M.C.H. permission on 21-8-2004 various photographs taken by this office shows that land has been vacant till recently and as such the tax receipt has no validity.

As far as the claim of Government is concerned, the Sy.No.74 admeasuring a total extent of 306 Ac. 15 gts., is recorded as "Sarkari Kancha Gutta" in the Pahani of 1356 Fasli. Marredpally Paigah an ex-Jagir village. After the abolition of Jagirs under Jagir Abolition regulation 1358 F, Marredpally village was merged in Diwani and vested with the Government. Nazim Atiyat

has conducted inam enquiry in respect of Asman Jahi Paigah. The ex-Jagirdar (Amir-E-Paigah) Nawab Zahiryar Jung Bhadhar filed a claim petition in the said enquiry. Nazim Atiyat after conducting enquiry passed orders on 28-10-1968 escheating 106 villages to the Government. In the list appended to the orders of Nazim Atiyat, the Marredpally village is shown at Sl.No. 93. The legal representative of ex-Jagirdar filed an appeal before Board of Revenue against the said orders of Nazim Atiyat. The said appeal was also dismissed. Aggrieved by the same, the Writ Petition bearing W.P. No.3530/77 was filed before Hon'ble High Court. The W.P. was also disposed of disallowing the claim of Jagirdar in respect of Marredpally. W.A.No.289/78 filed against the same was also dismissed.

The Sy.No.74 is a gut number having no sub division at all. It was ever subdivided and no supplementary sethwar was ever issued. For entire Sy.No.74 only one Tippon is available confirming the fact that the Sy.No.74 has never been subdivided. Subsequent to 1356 F, the then mischievous patwaries made certain entries in Revenue records mentioning subdivision No. in Sy.No.74 without any basis or authority and the same are under correction by the competent authority.

The entire land in Sy.No.74 is a rocky land without boulders and unfit for cultivation.

Further Government have appointed the then Commissioner of Land Revenue as Enquiry Officer vide G.O.Rt.No. 930 Revenue dated 21-7-1987 to cause a detailed enquiry about the status of Sy.No.74 of Marredpally village. The Commissioner after conducting a detailed enquiry made certain recommendations to the Government, holding that the land in Sy.No.74 is a Government land. Government have issued Government a memo vide 2678/Assn III (2) 87-25, Revenue, dated 10-2-1994 accepting the

recommendation of one man Commission.

In the year 1965-70 Town survey has been conducted in the M.C.H. limits of Marredpally village. The Sy.No.74 part which is in M.C.H. limits has been surveyed as one Block evidencing the fact that no subdivisions were existing in Sy.No.74.

The entries in Pahani of 1356, F and the absence of subdivision record for various alleged subdivisions of the Sy.No.74 shows that it is a Government land beyond anybody's doubt.

They have pleaded interalia that summary proceedings cannot be initiated. Along with their explanation they have submitted a Judgment of Hon'ble Supreme Court of India in CA No.2031/1997 with 136 and 137/1978 dated 16-3-1982 in support of their contention. The said orders of Hon'ble Apex Court are applicable to the cases where the complicated question of title arise for decision. But in this case there is no dispute with regard to the title of Government.

They have relied merely on the sale deeds placing total reliance on the assignment purported to be granted by the then Piga authorities in favour of one Masab Jung and the Nazim Athiyath order shows that the assignment purported be given in favour of Mansab Jung is illegal and void. The encroacher cannot claim title basing on sale deeds wherein rights are traced through one Mansab Jung, the alleged assignee.

In view of the above, the above mentioned three individuals have no lawful entitlement, and their possession is illegal, hence they are liable for eviction forthwith. Notice under Section (6) of APLE Act shall be served and evicted.

Sd/-
Mandal Revenue Officer,
Marredpally
Mandal.

It is stated by the writ petitioners that the first writ petitioner and two others purchased the following houses in respect of plot numbers mentioned each against the Sy.No.74/8 at situated at Nehrunagar Cooperative Housing Society Limited, East Marredpally, Secunderabad from A.S.Gopal and two others as follows:-

House No	Plot No.	Vendor	Vendees	Agreement of Sale-cum-GPA dt.
10-3-113P 10-3-32/9/114P 10-3-32/9/115P	113 114 115	A.S.Gopal R.Madhava Rao Smt.Gayatri	M.Vijaya Laxmi, Monagari Pentamma & S.Vasantha	1.2.2006

It is further stated that the petitioners' vendors purchased the said property from their vendors as follows:-

House No.	Plot No.	Vendor	Vendees	Reg. Sale Deed No. & Dt.
10-3-113P	113	Niraj Singh Yadav Majoj Singh Yadav	A.S.Gopal	250/1996 Dt.18.3.1996
10-3-32/9/114P	114	Income-Tax Officer	R.Madhava Rao	Sale Cert. Dt.21.3.1984
10-3-32/9/115P	115	-do-	Smt.Gayatri	-do-

It is stated that one Ch.Rajyalakshmi was the purchaser of the property bearing House No.10-3-113P from the Income-Tax Department in the public auction held on 7-2-

1984 and she sold the same to Sri Niraj Singh Yadav and Manoj Singh Yadav under Regd. Sale dt.6-7-1991 and thus the entire property originally belonged to one P.Bhaksara Murthy, who was a defaulter under Income-Tax Act. It is also stated that the said Bhaskara Murthy purchased an extent of 12,100 sq.yards from one Mansab Jung, S/o.Ghulam Hussain Khan under a registered sale deed dt.25-4-1959 and thus for the last nearly 50 years the petitioners predecessors in interest are the owners and possessors of the land. It is further averred that while so the vendors of the petitioners applied to the Municipal Corporation of Hyderabad for the construction of stilt + 3 upper floors for 9 residential flats, 3 flats in each floor and the same sanctioned in Permit No.51/97 in File No.03837/CSC/TPT/2003 dated 21-8-2004. It is also stated that as the vendors of the petitioners could not complete the construction with their own funds, they sold the property along with rights for construction to the petitioners and the petitioners have been constructing the residential flats with their own money. It is further stated that while so, when the 2nd respondent without any authority of law has been interfering with the petitioners' construction stating that the said land belongs to the Government, the petitioners were constrained to file W.P.

No.15628/2006 and the same was disposed of on 1-8-2006 directing the 2nd respondent to follow the law and thereupon the 2nd respondent issued a notice under Section 7 of the Act on 24-8-2006 to which the petitioners submitted a reply on 27-8-2006. It is also further stated that the 2nd respondent, without considering the said reply properly, passed an order under Section of the Act on 27-9-2006 and directed the Deputy M.R.O., to take possession of the land along with structures and the same was taken over under a cover of panchanama on 28-9-2006 at 7.30 p.m., without the petitioners' presence. It is also stated that even the final order on 27-9-2006 was also not served on the petitioners and the same was affixed to the structure. It is also further averred that the said land originally belonged to one Mansab Jung, S/o.Ghulam Hussain Khan who was the absolute owner of an extent of 34 acres in Sy.No.74/8 and sold an extent of 2 ½ acres out of the said land admeasuring 12,100 sq.yards under a registered sale deed to P.Bhaskara Murthy, who became a defaulter under Income Tax Act and the property of an extent of nearly 800 sq.yards was purchased by the petitioners' predecessors in interest in public auction on 7-2-1984 and a certificate of sale of immovable property was issued by the Tax Recovery

Officer on 21-3-1984 and thus the possession and title is *prima facie* in their favour and the respondents have no matter of right or interest over the land. It is further stated that the order of the 2nd respondent in Proced.No.B/348/06 dt.27-9-2006 violative of the provisions of the Act and Articles 14 and 300(A) of the Constitution of India. Further it is averred that the petitioners have been constructing 9 residential flats after obtaining building permission from the Municipal Corporation of Hyderabad and the construction is nearing completion and if the respondents are allowed to interfere with such construction activity at this stage, the petitioners would suffer heavy loss.

9. Counter affidavit is filed on behalf of the respondents and the same was sworn to by the 2nd respondent – M.R.O. It is averred in para 4 of the counter affidavit that the suit schedule land admeasuring 800 square yards falls in Sy.No.74 of Marredpally village and the said Sy.No.admeasuring Ac.306.15 gts., is classified as “Kancha Gutta Sarkari” land in the Pahani for the year 1356 F. Further it is averred that after the promulgation of Hyderabad Jagir Abolition Regulation 1358 F, the said village was merged in Dewani (Government). Further it is stated that the land in Sy.No.74 which is classified as

Government land is being claimed by certain private individuals purely on the abssis of pote number entries in the pahanies of the year subsequently to 1951 which had crept into, without any basis or authenticity. It is also stated that the pote number shown in the aforesaid pahanies are not supported by any subdivision rd in the Survey Department, no supplementary sethwar was issued for Sy.No.74. It is further stated that normally the entries in the Revenue Rd upto column No.1 emanate from the survey record and that such subdivision entries, which are made in the pahanies without any reference to the supplementary sethwar or phodi (demarcated subdivision by Survey Department) record, do not carry any authenticity and they will be treated as irregular. It is also stated that the then M.R.O., Secunderabad had filed a petition before District Revenue Officer Hyderabad usn 15(2) of Hyderabad Record of Rights Regulation 1358F for correction of entries in the pahanies. It is further stated that notices were issued to the interested parties. It is further stated that one of the claimants E.Bhagwan Das filed a W.P.M.P. in W.P. No.20810/94 and got interim orders dt.29-12-94 staying all further proceedings before District Revenue Officer and the said Writ Petition is still pending and hence the correction of entries in pahanies is pending for the above stated reason. It is further stated

that the pote numbers for Sy.No.74 i.e., 74/1 to 74/13 have no validity and the same can be understood as being the hand-work of the Village Officers who handled the record at the time of Jagir Abolition. Further it is averred in para 9 of the counter affidavit that during the year 1964-70 Town Survey has been conducted and in the said Town Survey also no subdivisions for Sy.No.74 was done owing to the fact that it is a Government land and there were no subdivisions. It is further stated that for entire Sy.No.74 only one tippon is available in the Survey Department showing that it is a gut number. It is further stated that the village map of Marredpally (Paigah) also shows that there are no subdivisions for Sy.No.74 and hence the claim of petitioner that the suit scheduled land is part of Sy.No.74/B is factually incorrect. It is also further stated that aggrieved by the above action, the petitioner had filed this Writ Petition and by filing a W.P.M.P.No.26303/2006 they sought for a direction against the respondents to restrain them from interfering with their alleged possession and the Hon'ble High Court while disposing of the said W.P.M.P. on 29-9-2006 passed the following interim orders:

> *"It is stated by G.P. for Revenue that possession already had been taken yesterday by virtue of a panchanama. The same is hereby recorded. In*

view of the facts and circumstances, status quo obtaining as on today to be maintained until further orders."

Further it is stated that the writ petitioner filed O.S.No.1135/2006 on the file of XI Junior Civil Judge, City Civil Court, Secunderabad on 28-9-2006 for the same property i.e., a day before this Writ Petition, had been filed praying for permanent injunction and the Civil Court made an interim order on 29-9-2006 directing both the parties to maintain *status-quo*. Further specific stand is taken in para 12 of the counter affidavit that the sale transactions which are referred to in para 2 are not binding on the respondents as respondents are not parties to the same. It is further stated that neither Bhaskar Murthy nor Mansab Jung S/o.Gulam Hussain Khan have any right to the land in question which is classified as Government land as per pahani of 1356 F. It is also stated that there is no such subdivision No.74/8 in Sy.No.74 and the entire Sy.No. is a gut number having Ac.306.15 gts., and the tippon and the village map of Marredpally show that there is no such subdivision for Sy.No.74 of Marredpally village and hence neither of the predecessors nor the petitioners have any valid right to claim the land in question and the present petitioners cannot have any better right than their predecessors. Further specifically it is averred in para 13

of the counter affidavit that the contention of the petitioners that they were sanctioned building permission by the Municipal Corporation of Hyderabad on 21-8-2004 is untenable and the petitioners had suppressed the fact that they have filed Writ Petition No.10791/2006 wherein it was not stated that Madhava Rao and others have sold away the property to these writ petitioners and the said Writ Petition was withdrawn without mentioning proper reasons. It is also further stated that in the said Writ Petition initially *status quo* was ordered. It is further stated that since the interim orders of the Court were not allowing the petitioners to make further constructions and failed to vacate them, the said Writ Petition was withdrawn and another Writ Petition W.P.No.15628/2006 has been filed and the subject land in both the Writ Petitions is the same. It is also further stated that the said W.P.No.15628/2006 was disposed of on 1-8-2006 directing the second respondent to act according to law. After following due process of law under A.P.Land Encroachment Act, the land in question, whereupon construction is being taken up, was taken into the custody after disposing of their reply and serving eviction notice. It is also stated that it is not true to say that the panchanama was conducted at 7.30 p.m., on 28.9.2006 and the

petitioner is put to strict proof of this allegation. It is further stated that a final order dt.27.9.2006 was also served on the petitioners and another encroacher. It is also further stated that inspite of serving speaking orders and eviction notice, the petitioners went ahead with construction in full swing by engaging 100 – 150 labourers and this compelled the respondent to take over possession on 28.9.2006 at 4.30 p.m. It is also stated that it is not true to say that the petitioners were not present at the time of taking over possession and a Government sign board has also been erected. Further specific stand is take that the plot holders who purchased the land from Income-Tax Department in an open auction who are staying in the neighbouring plots have got their possession regularized by the Government on payment of Rs.1,000/- per sq.yard as per G.O.Ms.No.890, dt.12-11-1998. It is further averred in para 15 of the counter affidavit that the Income-Tax Department had not enquired into the rightful owner of the land in question. It is stated that Bhasker Moorthy has no right whatsoever to the land in question and the true owner of the land in question i.e., the Government has no knowledge of the said auction and the same has not participated in the auction proceedings, hence the certificate of sale issued by the Income-Tax Department is not binding on the respondents. It is also stated that

having considered all the facts and circumstances, the respondents have invoked summary proceedings to take over possession of the land and as such the proceedings of the second respondent are absolutely legal and are as per law.

10. With the permission of the Court an additional counter affidavit was filed wherein it was specifically stated that the persons who have made constructions have got the land regularized vide G.O.Ms.No.890 dated 12-11-1998.It is also stated that originally the Writ Petition was filed by the first petitioner and later on second petitioner got himself impleaded. Several other factual details relating to the sale transaction also had been referred to. It is also stated that Gopal, Gayatri and Madhav Rao filed W.P.No.10791/2003 praying for a direction to restrain the respondents therein from interfering with the construction that was going on in plot No.113, 114 and 115 and obtained order of *status quo* on 31-5-2006 and they filed a letter dated 16-10-2006 seeking to withdraw the said Writ Petition and accordingly the said Writ Petition was dismissed as withdrawn. It is also stated that the petitioners in the above Writ Petition wanted to approach the competent authorities for getting the encroachment regularized. It is also further stated that

later Smt. Vijayalaxmi, M.Pentamma and Vasantha fild W.P.No.15628/2006 praying for a direction against the respondents not to interfere with their possession over the land in H.No.10-3-113/P, 10-3-32/9/114P and 10-32-9/115P in East Marredpally and the Writ Petition was disposed of directing the respondents to act in accordance with law. It is stated that in pursuant thereto a show cause notice was issued and the filing of the suit O.S.No.1135/2006 again had been referred to. The suppression of material facts also had been specified and it is also specifically stated that the petitioners may sell away the plots to gullible persons and may cause loss to them since the petitioners are not having any legal rights to make such constructions. Several Writ Petitions filed in relation to Sy.No.74 pending before this Court also had been referred to which are as hereunder:-

W.P.No.27218/2006 filed by Pradeep & others
W.P.No.22831/2002 filed by Grand Estates Pvt.Ltd.
W.P.No.8916/2004 filed by Manoj Kumar and others
W.P.No.11510/2005 filed by Venkat Swamy
W.P.No.14577/2000 filed by Defence Civilian Employees
Cooperative Society
W.P.No.20622/1998 filed by K.Viswanath Raju
W.P.No.20810/1994 filed by E.Bhagwandas
W.P.No.16278/1998 filed by E.Bhagwandas
W.P.No.17164/1995 filed by E.Bhagwandas.

11. A reply affidavit was filed again repeating the

self-same stand but however admitting the judicial proceedings and specific stand was taken that the Advocate was instructed to withdraw the suit and it is stated that the same was withdrawn. It is also stated that in the light of the direction in W.P.No.15628/2006 directing the respondents to act in accordance with law, the respondents invoked the provisions of the Act which are summary in nature and the same cannot be sustained. It is also stated that the petitioners are prepared to deposit the amount of Rs.1,000/- per square yard as per G.O.Ms.No.890, dt.12-11-1998 subject to the result of the Writ Petition. Several other factual details also had been narrated.

12. An application was filed on behalf of the petitioners for reception of additional documents which was allowed and the said documents are as hereunder:-

1) Copy of the final report of enquiry by the Commissioner of Land Revenue into the dispute of Sy.No.74 of Marredpally and 844/1 of Malkajgiri village of Hyderabad District.

2) Copy of G.O.Ms.No.890, Revenue (ASSN.III) Department dated 12-11-1998 regularizing the occupation of the land in Sy.No.74/12 purchased in a sale conducted by the Income-Tax Department.

3) Photos showing the location of the area and the structures existing as on today in the disputed site.

The impugned Order already had been referred to supra and in the objections raised specific stand was taken that the summary proceedings under the Act cannot be resorted to in the facts and circumstances of the case. However, further specific stand was taken in the reply affidavit that the petitioners are prepared to deposit the amount for the purpose of regularization, no doubt, such deposit to be subject to the result of the Writ Petition. As can be seen from the facts of the case, it may be true that the petitioners came into possession recently but the predecessors in title purchased this property in public auction on 7-2-1984 and a certificate of sale of immovable property was issued by the Tax Recovery Officer on 21-3-1984. Thus, *prima facie,* the possession and title are in favour of the petitioners. No doubt, certain submissions are made in relation to the nature of interest which these petitioners have in the property in question and their right to maintain the present Writ Petition and their *locus standi* as well. When the predecessors-in-title of the petitioners and subsequent thereto, the petitioners have been in settled possession of the property in question for sufficiently a long time, whether the same is under the defective title as contended by the respondents or not, may have to be adjudicated upon and in such cases, the

summary remedy under the Act cannot be invoked. In ***Govt. of A.P.'s case (referred to 1 supra)*** the Apex Court at paras 7 and 9 held as hereunder:-

> *"It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorized occupation of any land which is "the property of Government". In regard to property described in sub-Sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorized occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorized occupation of a land "for which he is liable to pay assessment under Section 3." Section 3, in turn, refers to unauthorized occupation of any land "which is the property of Government." If there is a bona fide dispute regarding the title of the Government to any*

property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for who benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than twelve years before the date of the suit and the University was not in possession of the property at any time within that period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impersmissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

The conspectus of facts in the instant case

justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary inquiry contemplated by Ss.6 and 7 of the Act. The long possession of the respondents and their predecessor-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. May be, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily."

In the decision referred (2) supra the Division Bench of this Court following the ratio of the Apex Court referred (1) supra held at para 3 as hereunder:-

"*We have good reasons to agree with the view taken by the learned single Judge that the proceeding under Article 226 of the Constitution of India, is not suited for any adjudication into the title of any person in a property. We have, however, good reasons to differ with the view taken by the learned single Judge that Section 6*

of the Land Encroachment Act is not available to the appellants for removal of the alleged encroachments upon a land, which satisfies the requirements under the A.P. Land Encroachment Act, 1905. Section 6 of the Act states:

> *"(1) Any person unauthorizedly occupying any land for which he is liable to pay assessment under Section 3 may be summarily evicted by the Collector, Tahsildar or Deputy Tahsildar, and any crop or other product raised on the land shall be liable to forfeiture and any building or other construction erected or anything deposited therein shall also, if not removed by him after such written notice as the Collector, Tahsildar or Deputy Tahsildar may deem reasonable, be liable to forfeiture. Forfeitures under this Section shall be adjudged by the Collector, Tahsildar or Deputy Tahsildar and any property so forfeited shall be disposed of as the Collector, Tahsildar or Deputy Tahsildar may direct."*

This Section does not speak either of the duration, short or long, of encroachment and indicate that for the decision whether any person should be summarily evicted rests with the Collector, Tahsildar, or Deputy Tahsildar, as the case may be and on the decision of the question in respect of the nature of the property on which the encroachment is alleged to have been committed. What may finally be relevant in such a case in issue is whether some one is in

occupation of a property bona fide and whether such possession is exercised by him openly. If such possession is exercised for an appreciable length of time, one can plaintiff accept the bona fide of the claim, otherwise, the claim may not be deemed without there being adjudication to be bona fide. In Government of Andhra Pradesh vs. T.Krishna Rao (AIR 1982 S.C., 1081) the Supreme Court has said: "If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title." In this case, the Supreme Court has also indicated that long possession would raise a genuine dispute between the claimant and the Government on the question of title, but also pointed out: "It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, plaintiff, to have a bona fide claim

to the property requiring an impartial adjudication according to the established procedure of law." What thus flows from the above, in our considered view, is that primary concern will be to see whether there is a bona fide claim of title and there are reasonable grounds to plaintiff hold that the title to the property is in dispute and as such that a primary (sic.summary) procedure for eviction should be avoided. Adverting to the facts of the case, what is seen is, a series of transactions in respect of the property without, however, any dispute as to the property being under the Court of Wards and an agreement of sale, which has taken to the Civil Court for a specific performance and allegedly decreed by the Court against the alleged vendor of the petitioner-respondens. Constructions are said to have come up, but there is no claim on behalf of the petitioner-respondents that they complied with the requirements of the various provisions of the Hyderabad Municipal Corporation Act. Unauthorised character of the occupation of the land is not displaced by the materials which are brought on the record of the instant proceeding and unauthorized construction is writ large, because provisions of the Hyderabad Municipal Corporation Act are not complied with. Relief, which this Court at such a juncture can grant will be only in the nature of interim injunction leaving the parties to seek their remedy before the appropriate civil Court. Learned single Judge, on the facts as stated above, has chosen to restrain the Government from evicting the petitioner-

respondents and/or demolishing constructions by resorting to the summary procedure under Section 6 of the Act and asked the Government to seek adjudication of title and eviction in the civil Court. The order, thus, has the effect of making the appellants to resign to the legal acts of the petitioner-respondents of coming up with the constructions upon the land, for which the appellants have a definite and bona fide claim. In our considered view, the best course, on the facts and in the circumstances of the case, would be to leave the dispute for adjudication by the Civil Court without there being any such condition of injunction in favour of the petitioner-respondents, as injunction, if any, can always be granted by the Civil Court if the petitioner-respondents establish a prima facie case and show balance of convenience in their favour."

Reliance also was placed on the decision referred (3) supra wherein the learned Judge of this Court in the context of the land in self-same survey number observed as hereunder:-

"In this case, it is to be seen, the petitioner has purchased the plot by a registered sale deed as early as in 1984 and even the vendor was allotted and was sold the said piece of land by a Cooperative Society.

In that view of the matter, I allow the Writ Petition and set aside the memo dated 1-12-1997 in No.F3/14/8204/97, passed by the District Collector, Hyderabad. Further, I permit the

petitioner to file an undertaking in the shape of an affidavit to the effect that he will not claim any equity, in the event of upholding the claim of the Government in pending Land Grabbing Case No.16/97. If the petitioner applies for construction permission along with the proof of filing an affidavit before the second respondent, the same shall be considered by the third respondent – Secunderabad Cantonment Board for grant of construction permission, without insisting for "No Objection Certificate" from the second respondent."

13. In the light of the facts of the present case and also the provisions of the Act and the nature of the impugned Order made and the decisions referred to supra, this Court is of the considered opinion that the impugned Order as such cannot be sustained. It is no doubt true that the petitioners in their anxiety have been prosecuting the other remedies as well but in the light of the peculiar facts inasmuch as the Civil suit, in fact, had been withdrawn, the same may not come in the way of this Court in moulding the appropriate relief to be granted in the present Writ Petition. In view of the same, the impugned Order cannot be sustained and accordingly the Writ Petition is hereby allowed. However, it is made clear that this would not come in the way of the writ petitioners pursuing their other remedies, if any, inclusive of praying

for regularization on deposit of amount, if the petitioners are so advised. Equally, the respondents also are at liberty to initiate any other appropriate action, if available in law, in accordance with law especially in the light of the view expressed by this Court that the summary proceedings initiated and the resultant order made thereon cannot be sustained.

14. With the above observations, the Writ Petition is hereby allowed. No order as to costs.

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Justice P.S.Narayana

December, 2006

Note: L.R.Copy to be marked (Yes/No)

(B/o.SMR)

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[1] AIR 1982 S.C., 1081

[2] 1997 (4) ALT 428 (DB)

[3] ***W.P.No.15883 of 1999***